

UNEMPLOYMENT COMPENSATION
BOARD OF REVIEW
Department of Labor and Industry
Commonwealth of Pennsylvania

UC-59 REV 5-09



APPEAL NUMBER 11-09-A-G141
DATE MAILED 1/27/2012
FINAL DATE TO
APPEAL 2/13/2012
SSN [REDACTED]

REFEREE'S DECISION/ORDER

CLAIMANT

EMPLOYER

ROSEMARIE A FRITCHMAN
[REDACTED]

US

INTEGRITY STAFFING SOLUTIONS
5925 TILGHMAN ST STE 600
ALLENTOWN PA 18104
US

CLAIM:

FILED: 11/28/2010

DETERMINATION/S ISSUED: 12/2/2011

BY: SCRANTON UC SERVICE CENTER

CLAIMANT DETERMINED UNDER UC LAW: Eligible 402(e)

FOR WAITING WEEK ENDING:

FOR COMPENSABLE WEEK/S ENDING: 8/20/2011

APPEAL:

FILED: 12/15/2011

BY: Employer

HEARING HELD: 1/26/2012

IN: BETHLEHEM, PA

ATTENDED BY: Claimant, Employer

ENCLOSURE: A translation document UC-1627 is enclosed with this notice.**FINDINGS OF FACT:**

1. The claimant was employed by Integrity Staffing Solutions at their client Amazon as a packer at \$12.75 per hour full time from July 18, 2011 until August 12, 2011.
2. The employer discharged the claimant for accruing six attendance points.
3. The employer has an attendance policy which is provided to the claimant at the time of hire as well as covered in their orientation.
4. The attendance policy outlines that each absence accrues 1.5 points and 1 point is accrued for leaving greater than one hour prior to the end of their work shift.
5. According to the employer's records, the claimant left greater than one hour prior to the end of her work shift on July 29, August 2, and August 8, 2011, accruing 3 points.
6. On August 9 and August 11, 2011, the claimant was absent, accruing an additional 3 points.
7. The claimant had accumulated 6 attendance points in less than two weeks.
8. On August 12, 2011, the claimant reported to ISS's office at Amazon to pick up her paycheck and attempted to provide her doctor's excuse from August 9, 2011.
9. At that time, the employer provided the claimant her paycheck but apprised the claimant to hold on to the doctor's excuse until she reported to work on Monday.

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10. When the claimant reported to work on August 15, 2011, the claimant was notified her assignment was ended and the ISS representative apprised the claimant they did not need her doctor's excuse due to the assignment ending.
11. Despite that conveyance, the claimant left the doctor's excuse with the ISS representative at the site.

ISSUE: Is the claimant unemployed due to discharge for reasons that constitute willful misconduct in connection with the work under the Act to be ineligible for UC benefits?

REASONING: The UC Service Center issued a Notice of Determination on December 2, 2011, on the claimant's application for benefits dated November 28, 2010, finding the claimant eligible for UC benefits under Section 402(e) of the Law commencing with compensable week ending August 20, 2011.

Section 402(e) of the Law provides that a claimant shall be ineligible for compensation for any week in which claimant's unemployment is due to a discharge or temporary suspension from work for willful misconduct connected with the work. While the term "willful misconduct" is not defined in the Law, the Board of Review and the Courts in numerous decisions have defined willful misconduct as an act of wanton or willful disregard of the employer's interests, a deliberate violation of the employer's rules, a disregard of the standards of behavior which the employer has a right to expect of an employee, or negligence indicating an intentional disregard of the employer's interests or of the employee's duties and obligations to the employer.

Since the claimant was discharged, the employer has the burden of establishing that the discharge was for willful misconduct in connection with the claimant's work in accordance with Section 402(e) of the Law.

Regarding violations of attendance, the employer has to establish the existence of an attendance policy, the claimant's awareness and violation of such policy. In this instance, the employer has provided un rebutted testimony that they maintain an attendance policy that is provided to new hires at the time of their hire, as well as covered in their orientation session. The employer has provided competent and credible testimony that they assess various points depending on whether a worker misses less than hour, greater than an hour or an entire work shift. Finally, the claimant reached the number of points allowable under the employer's attendance policy to permit termination. Therefore, the employer has initially met their burden as contemplated under Section 402(e) of the Law to shift the burden to the claimant to show cause for her attendance violations or that the employer's no-fault policy was unreasonable.

In this instance, the claimant has provided competent and credible testimony that due to excessive heat at the Amazon facility, the claimant was unable to work the remainder of her shift on August 8, 2011. The claimant sought medical attention on August 9, 2011 with her family practitioner who recommended that she stay out of such excessive heat, which the claimant estimated was around 100 degrees in the facility. Finally, the claimant attempted to provide that doctor's excuse that she had obtained on August 9, 2011 to an ISS representative on August 12, 2011, when she picked up her paycheck and was apprised to hold on to it until she reported to work on Monday, which she did. At that time, when the claimant attempted to present the doctor's note to the ISS representative on Monday, August 15, 2011, they informed the claimant they did not need it because her assignment had ended. Ironically, following the credible testimony of the ISS representative at the hearing, they do accept doctor's excuses that may or may not excuse an absence to not be assessed a point. For unknown reasons, that doctor's note dated August 9, 2011 that the claimant provided to the ISS representative never made it to her file that the employer had at the time of the UC hearing.

However, due to the claimant's competent and credible testimony that she was unfit for duty due to experiencing symptoms of excessive heat due to the temperature in the facility, the claimant has shown cause to leave early on August 8, 2011 and to miss work on August 9, 2011 and August 11, 2011. Accordingly, benefits are granted.

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ORDER: The Notice of Determination as issued by the UC Service Center is **AFFIRMED** as to Section 402(e) of the Law. Claim credit for weeks commencing with compensable week ending August 20, 2011 is **GRANTED**.



Mark W. Brown, Referee

mas-9110

Pursuant to the provisions of the Law, the above decision shall become final on the date it was mailed to the parties, unless any aggrieved party files a further appeal to the Pennsylvania Unemployment Compensation Board of Review within the fifteen (15) day appeal period.

The last date to file an appeal to this decision is 2/13/2012.

IF YOU WISH TO FILE A FURTHER APPEAL

You have the right to file a further appeal to this decision within fifteen (15) days of the date of mailing. Your appeal must include the following information: ► your name; ► the claimant's name and social security number; ► the date of the decision being appealed; ► the reason for appeal; ► the appeal number; ► your address. Under the provisions of Act 5 of 2005, you may file your own appeal, or your appeal may be filed by an attorney or by any other advocate of your choice.

You may file your appeal by mail. If you file your appeal by mail, the appeal is filed as of the date of the U.S. Postal Service postmark or a U.S. Postal Service form 3817 (Certificate of Mailing) or a U.S. Postal Service certified mail receipt. If there is no U.S. Postal Service postmark, the date of filing will be the date of a postage meter mark on the envelope containing the appeal. If the appeal contains neither a postmark nor a postage meter mark, the date of filing will be the date recorded by the Department when the appeal is received. Your appeal should be mailed to the following address:

Department of Labor & Industry
UC Board of Review
Room 1119
651 Boas Street
Harrisburg, PA 17121

You may file your appeal by common carrier. If you file your appeal by common carrier, the appeal is filed on the date it is delivered to the common carrier as established by the records of the common carrier. You should use the above address to send your appeal by common carrier.

You may file your appeal by fax. If you file your appeal by fax, it must be received by the Department by 11:59 p.m. on the last day to appeal. The filing date will be determined by the date of receipt imprinted by the receiving fax machine. If there is no receipt date imprinted by the receiving fax machine, the sender's fax banner will control the date of filing. If neither date appears on the fax, the date of receipt recorded by the Department will serve as the date of filing. Your appeal should be faxed to the following number:

717-346-4484

NOTE: A party filing an appeal by fax is responsible for delay, disruption or interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.

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You may file your appeal via electronic mail (e-mail). If you file your appeal by e-mail, the appeal is filed on the date of receipt recorded by the Department's electronic transmission system. If you wish to file your appeal by e-mail, forward your appeal information to the Department at:

L&IBoardAppeals@state.pa.us

WARNING: Information submitted by e-mail is not secure.

NOTE: A party filing an appeal via the Internet or electronic mail is responsible for using the proper format and for delay, disruption or interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.

If you wish to file your appeal **in person**, you may do so at any CareerLink office during normal business hours on or before the last day to appeal shown above. The CareerLink office will forward your appeal to the UC Board of Review for processing.

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